



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,531	02/12/2004	Shrjie Tzeng	58268.00361	4147
32294 7590 05/27/2008 SQUIRE, SANDERS & DEMPSEY L.L.P. 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER				
KRISHNAN, VIVEK V				
ART UNIT		PAPER NUMBER		
2145				
MAIL DATE		DELIVERY MODE		
05/27/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/776,531	Applicant(s) TZENG, SHRJIE
Examiner VIVEK KRISHNAN	Art Unit 2145

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Jason D Cardone/
 Supervisory Patent Examiner, Art Unit 2145

Continuation of 11, does NOT place the application in condition for allowance because:

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action, dated March 12, 2008, is not persuasive

Both the Non-Final Rejection, dated October 12, 2007, and the Final Rejection, dated March 12, 2008, clearly show Kalkunte's destination address anticipates the claimed destination device identifier.

2. Applicant's arguments, filed May 12, 2008, with respect to Claim Rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive.

With respect to Applicant's arguments regarding Claims 1, 6, and 11:

Examiner disagrees with Applicant's assessment of both the plain meaning definition and specification's definition of the claimed destination device identifier. Examiner asserts that it would be evident to one of ordinary skill in the art at the time the invention was made that a destination address is an identifier of a destination device. Furthermore, the specification in no way states or suggests that the claimed destination device identifier may not be a destination address. Although the specification refers to prior art trunking algorithms using a destination address, it certainly does not state or suggest the use of "...destination device (or chip) identifier, as opposed to a destination address" in providing an allegedly improved trunking algorithm.

Furthermore, as discussed in the Final Rejection, dated March 12, 2008, Examiner asserts that a trunk group of ports inherently belongs to a network device. Therefore, in making a determination as to whether a destination address corresponds to a trunk group of ports, the determination as to whether the destination address corresponds to one of the network devices is made. This would be evident to one of ordinary skill in the art.

3. Applicant's arguments, filed May 12, 2008, with respect to Claim Rejections under 35 U.S.C. 103 have been fully considered but they are not persuasive.

With respect to Applicant's arguments regarding Claims 2, 7, and 12:

As discussed in the Final Rejection, dated March 12, 2008, in view of the aforementioned argument that Kalkunte discloses each and every limitation of Claims 1, 6, and 11, Applicant's arguments are moot.